that instrument. If the Courts would refuse to execute a law suspending the writ of *habeas corpus*, when the public safety did not require it; a law violatory of the freedom of the press, or trial by jury, neither would they enforce a statute which contained matter *different* from what was expressed in the title thereof.

We are familiar with the history of this clause in the Constitution, and the striking event which gave rise to it. The necessity for its observance increases with each successive session of the Legislature.

For the truth of this remark, I need only appeal to the evidences of haste and inadventence spread broad-cast on our Statute Book. It is a common practice to pass bills by their title only, without requiring them to be read, in their progress through each branch of the General Assembly. To prevent fraud and surprise, how important it is, that the members should be notified at least, by the *title* of the Act, of the subject-matter about which they are legislating; at any rate, that they should not be misled by the title.

It is unnecessary to examine any other point made by the record, as the plaintiffs will be entitled to a recovery, provided they can make out their case in other respects.

Supreme Court of Ohio, January Term, 1853.

LAWSON AND COVODE *vs.* THE FARMERS BANK OF SALEM.

1. Under the Statute of Ohio, of March, 1850, which provides that "no person offered as a witness shall be excluded by reason of his or her interest in the event of the action; but this section shall not apply to a party to the action, nor to any party for whose immediate benefit such action is prosecuted or defended, &c." Directors and Stockholders of a Bank are competent witnesses for the Corporation, in a suit to which it is a party.
2. Notice of dishonour of a bill or note, where the parties reside in different places or States, must be deposited in the post office in time for the mail of the next day, provided it be not made up and closed at an unreasonably early hour, or before early and convenient business hours. *Downs* vs. *Planters Bank*, 1 Sm. & M., 261; *Chick* vs. *Pillsbury*, 24 Maine, 458, approved; *dicta* of Chancellor Kent; 3 Comm. 106; and of Judge Story, Comment. on Bills, § 291, overruled.

3. Where the mail from the place of protest of a bill, to the place of residence of the endorser, closed at ten minutes past nine, A. M., on the day subsequent to the protest; business hours beginning at seven o'clock, A. M., at the former place, it was *held* that notice of dishonour deposited in the post office after such closing of the mail, was too late.
4. The holder of a bill is only bound to give notice of dishonour to his immediate endorser; and so of an agent for collection.

This was a writ of error directed to the Court of Common Pleas of Columbiana County.

George M. Lee, for Plaintiffs in Error.

Upham & Brooks, for Defendant in Error.

The opinion of the Court was delivered by

BARTLEY, CH. J.—The original action was assumpsit for recovery against Lawson and Covode, as endorsers of a Bill of Exchange, which is as follows:

Wellsville, April 25, 1848.

$4000.00.

Ninety days after date, pay to the order of Lawson and Covode, four thousand dollars, value received, and place the same to the account of

Yours, &c. W. F. JORDAN.

To J. JORDAN & SON, Pittsburg."

"Pay to Farmers Bank of Salem.

LAWSON & COVODE."

Accepted by J. Jordan & Son.

The declaration counts upon the instrument above mentioned, and also contains the common counts. Plea—Non Assumpsit.

It appears that this Bill of Exchange which was drawn and endorsed in this State, was discounted by the Bank of Salem, and the money paid to the acceptors thereof; subsequently it was endorsed by the Bank of Salem to the Exchange Bank of Pittsburg, in the State of Pennsylvania, for collection, Jordan & Son, the acceptors, living in the City of Pittsburg. It matured in the hands of the Exchange Bank of Pittsburg, on the 27th day of July, 1848, and being dishonored by the acceptors in Pittsburg, in the State of

Pennsylvania, was protested for non-payment by Webb Closey, a Notary Public of that city.

On the trial of the cause in the Court of Common Pleas, the Bank gave in evidence the Bill of Exchange, and the notarial protest attached thereto, dated July 27, 1848, also a certified copy of the Notarial Record of Webb Closey, with proof of his death since the protest of the bill. The defendants below objected to this last testimony, but the Court admitted it. During the trial the Bank called Joseph J. Brooks and John Dellenbough, as witnesses, both being Stockholders and Directors in the Salem Bank, not only at that time, but also when the bill was discounted and matured. To the testimony of these two witnesses the defendants below objected, but the Court overruled the objection, and admitted their testimony, which was material.

The bank having rested, the defendants in the Court below gave in evidence the notice of protest, which appears in the record sent to the Salem Bank by Notary Closey, and produced by the Cashier of the Salem Bank. And evidence having been given that the Exchange Bank of Pittsburg closed at three o'clock, P. M., on the 27th of July, 1848; that Notary Closey's office was about one square from the Pittsburg Post Office, that the mail left Pittsburg for Salem, at ten o'clock, A. M., on the 28th of July, and was closed at ten minutes after nine o'clock, A. M., and that the business hours of Pittsburg were from seven o'clock, A. M. till dusk, the parties rested the case. The notarial protest does not state when the notices were deposited in the post office, but the notice to the Salem Bank, which enveloped the notice to Lawson & Covode, the accommodation endorsers, is mail marked at the Pittsburg Post Office, July 29, 1848.[1] * * * *

Judgment was rendered against the defendants in the Court of Common Pleas, at the September Term, 1850, for the sum of $4,513.33. And it is to reverse this judgment that this writ of error is brought.

[1] The charge of the Court is omitted here from want of space. It was to the effect that the Notary had the *whole* of the 28th in which to deposit the notice.—Ed. L. Reg.

Several questions are presented by the assignment of errors, but it will be sufficient to notice the following:

1. Were Brooks and Dellenbough competent witnesses on behalf of the plaintiff, on the trial in the Court below?

2. Did the Court err in the charge to the jury, as to the sufficiency of the notice of the dishonor of the bill.

The first question involves the construction to be given to the third section of the statute of March, 1850, to improve the law of evidence, which provides, that "no person offered as a witness shall be excluded by reason of his or her interest in the event of the action, but this section shall not apply to a party to the action, nor to any party for whose immediate benefit such action is prosecuted or defended," &c.

This statute being remedial in its nature, is entitled to a liberal construction. The tendency of legislation has of late been to throw wide open the door for the admission of testimony, and in the administration of justice to repose rather upon objections to the credibility than to the competency of witnesses.

A stockholder in a private corporation is interested in the event of any suit to which it is a party. His interest is not immediate or direct, yet it is that legal interest which would render him incompetent as a witness on behalf of the corporation without the provisions of the statute above mentioned. The interest of a stockholder is not increased by his becoming a director. The directors of a corporation are simply agents in directing the management of its business, and this agency does not render their personal interest any more immediate or direct than that of other stockholders, when not coupled with a special individual liability of the directors for the debts of the corporation. So far, therefore, as the testimony of these witnesses was objectionable on the ground of interest, the objection went to their credibility, and not to their competency.

Were these witnesses then incompetent on the ground of being either parties to the action, or parties for whose immediate benefit the action was prosecuted? A party to the action is a person whose name appears upon the record in the case either as party, plaintiff, or defendant. They were not, therefore, actual parties to

the action; but were they parties for whose immediate benefit the action was prosecuted? The statutory exception of "any party for whose immediate benefit such action is prosecuted or defended," has an evident reference to that class of cases where the real party not named upon the record, prosecutes or defends through the medium of a mere nominal party in the action. The requisite qualification to bring a person within the exception is, that he be not simply interested in the event of the suit, but the object of immediate consideration in the suit, or real beneficiary for whom the suit is prosecuted or defended. To constitute this, the interest of such person in the suit must be direct and inevitable, and not contingent, indirect or remote. A stockholder and the corporation of which he is a member, are separate and distinct persons in law, and their interests are always distinct, and sometimes adverse. A person may either sue or be sued by a corporation of which he is a member. A judgment against the Bank of Salem would reach the property of the corporation, but could not bind the separate property of the stockholder in his individual capacity; and a judgment in favor of the bank, would not enure to the immediate benefit of any of the stockholders, but their interest in such judgment would be indirect, and depend on contingencies.

The *immediate benefit* contemplated by the statute to create the incompetency, is an interest or advantage resulting to him personally, as the immediate and necessary consequence of the judgment itself, and not such as might reach him indirectly through the medium of another person, and dependant upon a contingency.

The statute of Ohio above referred to, is very similar to Lord Denman's Act 6 & 7 Vict. c. 85, so far as it relates to the interest of witnesses, and the incompetency of parties. And the language of the exception in the English act is: "*for whose immediate and individual benefit,*" instead of "*for whose immediate benefit,*" the suit is prosecuted or defended. Numerous decisions have been made in England, giving a construction to this act, similar to that which is here given to the Ohio Statute. In the case of Black *vs.* Jones, 3 English Law and Equity, R. 559, it was decided that a creditor for whose benefit an assignment had been made to a trus-

tee by the debtor, is a competent witness for the trustee in an action brought by him against an execution creditor of the debtor, who had levied upon the goods, when the very question was as to the validity of the deed. Also, in the case of Harding *vs.* Hodgkinson, 4 English Law and Equity, R. 462, that a person entitled to a share in the proceeds of land devised to another, in trust for sale, is a competent witness in an action brought by the latter to establish his right to land for the purpose aforesaid.

The Court of Exchequer in England is reported as saying, that "the test whether a witness is a person in whose immediate and individual behalf, an action is brought or defended, either wholly or in part, is, whether his declarations would be admissible against the party on whose behalf he is called to give evidence."

We are of opinion, therefore, that the Court did not err, in their ruling on the subject of the admissibility of the testimony in question.

Did the Court of Common Pleas err in charging the jury, that if the notice to the endorsers, of the demand and non-payment of the bill, was deposited in the Post Office at Pittsburg, at any time during the day after the day of dishonor, without regard to the time of the departure of the mail for that day, it would be sufficient notice; and moreover, that if it was found inconvenient to deposit the notice in the Post Office in time for the mail of that day, it was in proper time if the notice was deposited in time to be sent off by the next mail of the day next after the day following the day of the dishonor of the bill?

This involves a very important question of the Law Merchant, and it is not a little surprising that there should remain any doubt or uncertainty at this late day, upon a question of such vital importance to the interests of commercial countries respecting the duties and liabilities of holders and parties to dishonored paper. And it is a matter of no small moment, that a question, which enters so largely as does this, into the every day business transactions of different commercial states and countries, should be settled, not only upon a certain and unvarying, but also upon a uniform basis.

The liability of the endorser is strictly conditional—dependant both upon due demand of payment upon the maker or acceptor, and also due and legal notice of the non-payment. The purpose and object of such demand and notice, is to enable the endorser to look to his own interest, and take immediate measures for his indemnity. The demand and notice being conditions precedent to the endorser's liability, it is incumbent on the holder to make clear and satisfactory proof of them before he can recover. The plaintiffs in error in this case, being accommodation endorsors, may well insist upon strict proof of due diligence in giving notice of the dishonor of the bill.

The law does not require the utmost diligence in the holder, in giving notice of the dishonor of a bill or note. All that is requisite, is ordinary or reasonable diligence. And this is not only the rule and requirement of the law merchant, but a statutory provision of this State. But what amounts to due diligence, or reasonable notice is, when the facts are ascertained, purely a question of law, settled "with a view to practical convenience, and the usual course of business."

The question was at one time strenuously contested, whether due diligence did not require, that where the parties reside in the same place, the notice of non-payment would be insufficient, unless given on the day of the dishonor of the bill; and where the parties reside in different places, unless sent by the mail of that day, or first possible or practicable mail after the default. *Findal* vs. *Brown*, 1 Term. R. 167. *Darbishire* vs. *Parker*, 6 East 3. Marius on Bills, 24. But the rule was established, and is supported by great weight of authority, that where parties reside in different places, and the post is the mode of conveyance adopted, although it was in no case necessary to send the notice by the post of the same day of the dishonor, or of the knowledge of the dishonor, the holder or other party being entitled to the whole of that day after the dishonor, or knowledge of the dishonor, to prepare his notice, yet that the notice would be insufficient unless put into the Post Office in time to go by the next mail after that day. And this is in conformity with the rule laid down by Mr. Chitty, in his learned

treatise on Bills of Exchange, in the following explicit language: "When the parties do not reside in the same place, and the notice is to be sent by the general post, then the holder or party to give the notice, must take care to forward notice by the post of the next day after the dishonor, or after he receives notice of such dishonor, whether that post sets off from the place where he is early or late; and if there be no post on such next day, then he must send off notice by the very next post that occurs after that day." Chitty on Bills, 485, (late edition.)

This is in accordance with the rule as settled by the Supreme Court of the United States. In *Lenox* vs. *Roberts*, 2 Wheaton, 373, Chief Justice Marshall says: "It is the opinion of the Court that notice of the default of the maker should be put into the Post Office early enough to be sent by the mail of the day succeeding the last day of grace." And in the case of the *Bank of Alexandria* vs. *Swan*, 9 Peters, 33, Justice Thompson approved of the general rule laid down in the case of *Lenox* vs. *Roberts*, holding that notice of the dishonor need not be forwarded on the last day of grace, but should be sent by the mail of the next day after the dishonor. The same rule was adopted by Justice Washington, in the case of *The United States* vs. *Parker's Adm'rs*, 4 Wash. R. 465, in which case that decision was affirmed on error by the Supreme Court, 12 Wheat. 559. The same rule received the sanction of Mr. Justice Story, in the case of the *Seventh Ward Bank* vs. *Hanrick*, 2 Story's R. 416. Although in the case of *Mitchell* vs. *Degrand*, 1 Mason, 180, he appears to have been disposed to even greater strictness, holding that when a bill is once dishonored, the holder is bound to give notice by the next practicable mail, to the parties whom he means to charge for the default. This, however, is explained by Justice Washington, in the case of *U. S.* vs. *Parker's Adm'rs*, to mean that the notice should be put into the office in time to be sent by the mail of the succeeding day. This rule, adopted by the Supreme Court of the United States, which is supported by the great weight of authority in England, and in the several States of the Union, in which the question appears to have been settled by reported adjudications, is subject to some qualifi-

cation relaxing its rigour. If two mails leave the same day on the route to the place of the residence of the endorser, it is sufficient to deposit the notice in the Post Office in time to go by either mail of that day, inasmuch as the fractions of the day are not counted. *Whitewell* vs. *Johnson*, 17 Mass. R. 449, 454. *Howard* vs. *Ives*, 1 Hill, N. Y. R. 263.

And for the reason that the mail of the day succeeding the day of the default, may go out in some places soon after midnight, or at a very early hour in the morning, and is sometimes made up and closed the evening preceding, it has been adjudged that inasmuch as the holder is allowed till the day after the day of the default to send off the notice, reasonable diligence would not require him to deposit the notice in the Post Office at an unseasonably early hour, or before a reasonable time can be had for depositing the notice in the Post Office after early business hours of that day. The rule as qualified and settled by the late authorities, and which I take to be the correct one, is, that where the parties reside in the same place or city, the notice *may* be given on the day of the default, but if given at any time before the expiration of the day thereafter, it will be sufficient; and when the parties reside in different places or States, the notice *may* be sent by the mail of the day of the default, but if not, it *must* be deposited in the office in time for the mail of the next day, provided, the mail of that day be not made up and closed at an unseasonably early hour. If, however, the mail of that day be closed before a convenient or reasonable time after early business hours, or if there be no mail sent out on that day, then it must be deposited in time for the next possible post. In the case of *Downs* vs. *Planters' Bank*, 1 Smedes & Marshall's R. 261, and also the case of *Chick* vs. *Pillsbury*, 24 Maine R. 458, the doctrine on this subject has been more fully examined than perhaps in any of the older cases, and the rule adopted is, that the notice, in order to charge the endorser living in another place or State, *must* be deposited in the Post Office in time to be sent by the mail of the day succeeding the day of the dishonor, providing, the mail of that day be not closed at an unseasonably early hour, or before early and convenient business hours. And this, I take to be the

correct rule. *Fullerton et al* vs. *The Bank of the U. S.*, 1 Peters, 605, 618; *Eagle Bank* vs. *Chapin*, 3 Pick. 180, 183; *Talbot* vs. *Clark*, 8 Pick. 51; *Carter* vs. *Burly*, 9 New Hamp. 559, 570; *Farmers' Bank of Maryland* vs. *Duvall*, 7 Gill & Johnson, 79; *Freeman's Bank* vs. *Perkins*, 18 Maine R. 292; *Mead* vs. *Engs*, 5 Cowen, 303; *Sewall* vs. *Russell*, 3 Wend. 276; *Brown* vs. *Ferguson*, 4 Leigh, 37; *Dodge* vs. *Bank of Kentucky*, 2 Marshall, 610; *Hickman* vs. *Ryan*, 5 Littell, 24; *Hartford Bank* vs. *Steedman*, 3 Connecticut R. 489; *Brenzor* vs. *Wightman*, 7 Watts & Serg. 264; *Townsly* vs. *Springer*, 1 Louisiana, 122; *Bank of Natchez* vs. *King*, 2 Robinson, 243; *Brown* vs. *Turner*, 1 Alabama *R.* 752; *Lockwood* vs. *Crawford*, 18 Conn. 363; Bayley on Bills, 262; Story on Promissory Notes, sec. 325; and Byles on Bills of Exchange, 160.

Some obscurity and uncertainty have been created on this subject, by the expression used in some of the cases, and by some of the elementary writers, that the holder or person giving the notice, has "one day," or "an entire day," in which to give the notice after the day of dishonor. The term *one day* or *an entire day*, seems not to have been used always in the same sense; and the confusion appears to have in part arisen from the fact, that where the parties reside in the same place, notice at any time before the expiration of the day after the day of the default will be sufficient, while where the parties reside in different places, the notice must frequently be mailed early in the day to be in time for the mail of that day.

The defendant in error relies upon the doctrine laid down in the elementary works of Chancellor Kent and Mr. Justice Story, as fully sustaining the charge of the Court below. Inasmuch as precision and certainty in the settlement of this rule are of very great importance, a careful examination of the subject seems to be required.

Chancellor Kent, whose accuracy in his Commentaries on American Law, is never to be questioned without grave consideration, in the late editions of his works, (See Kent's Com. p. 106,) states the rule as follows:

"According to the modern doctrine, the notice must be given by

the first direct and regular conveyance. This means the first mail that goes after the day next to the third day of grace; so that if the third day of grace be on Thursday, and the drawer or endorser reside out of town, the notice may indeed be sent on Thursday, but must be put in the Post Office or mailed on Friday, so as to be forwarded as soon as possible thereafter." And in a note by the learned author, explanatory of the text, it is said that "the principle that ordinary reasonable diligence is sufficient, and that the law does not regard the fractions of the day in sending notice, will sustain the rule as it is now generally and best understood in England, and the commercial part of the United States, that notice put into the Post Office on the next day, at any time of the day, so as to be ready for the first mail that goes thereafter, is due notice, though it may not be mailed in season to go by the mail of the day next after the day of the default."

Several cases are cited by the learned author, but they do not sustain his position. The case of *Jackson* vs. *Richards*, 2 Cains Cases, 343, referred to, is not in point, *Haynes* vs. *Birks*, 3 Bos. and Pub. 601, decides that when notes fell due on Saturday, the notice sent by the post on Monday was sufficient. Sunday being excluded, and not taken into account, the notice was sent by the post of the next legal day. In the cases of *Bray* vs. *Hadwen*, 5 Maule & Selwyn, 68, and *Wright* vs. *Shawcross*, 2 Barnwell & Aldersons, 501, it was decided that the notice having arrived on Sunday, was to be considered as having been received on Monday, and then the party had till Tuesday, the next post day, for giving the notice. In *Gall* vs. *Jerenry*, 1 Moody & Malkin, 61, where no mail when out on the day next after the day of the default, it was held that the rule being an impossible one on that day, a notice sent by the next succeeding mail day would be in season. The case of *Firth* vs. *Thrush*, 8 B. & C. 387, turned upon the question whether the attorney employed to ascertain the residence of the defendant, should be allowed a day to consult his client after information of the defendant's residence. And Lord Tenterden said: "if the letter, (giving information of the defendant's residence,) had been sent to the principal, he would have been bound to give

notice on the next day." The only other case referred to, is that of *Hawkes* vs. *Salter*, 4 Bing., 715; and this is the only one which even tends to sustain the position of the learned author. In that case, the bill was dishonored on Saturday, and the mail left at half past nine o'clock on Monday morning; and an unsuccessful attempt was made to prove that the notice was put into the Post Office on Tuesday morning. Best, C. J., expressed himself clearly of opinion "that it would have been sufficient, if the letter had been put into the Post Office before the mail started on Tuesday morning, but that there was no sufficient evidence that it had been put in, even on Tuesday morning." The opinion in this case was, therefore, a mere dictum, which determined nothing, the case being decided upon different ground.

But the position of Chancellor Kent, above referred to, is in direct conflict with the rule as laid down by himself in the first edition of his work. In the edition of 1828, vol. 3, p. 73, Kent's Com., the rule is stated in these words: "According to the modern doctrine, the notice must be given by the first direct regular conveyance. This means the first convenient and practicable mail that goes on the day next to the third day of grace; so that if the third day of grace be on Thursday, and the drawer or endorser reside out of town, the notice may indeed be sent on Thursday, but must be sent by the mail that goes on Friday."

In the last edition of this work, published in 1851, the editor, William Kent, admits the weight of authority to be in favor of the rule as laid down in *Chick* vs. *Pillsbury*, 24 Maine, and *Downs* vs. *Planters Bank*, 1 Smedes & Marshall, above referred to; and he says: that "the opinion of Ch. J. Best, in 4 Bing. 715, is the only one that sustains the rule suggested, and that the observations of Mr. Justice Story, were too latitudinarian in allowing the entire whole day next after the dishonor."

It is true, that Mr. Justice Story, in his work on Bills of Exchange, Sect. 291, says: "that an endorser need not give notice to his antecedent endorser, till twenty-four hours have elapsed after the receipt of his own notice of the dishonor."

And in his note to Sect. 290, of the same work, the author says:

that "the rule does not appear to be so strict as it is laid down by Mr. Chitty, and that it would be more correct to say, that the holder is entitled to one whole day to prepare his notice, and that, therefore, it will be sufficient, if he sends it by the next post that goes after twenty-four hours from the time of the dishonor," &c. And he adds: "I have seen no late cases which import a different doctrine. On the contrary, they appear to me to sustain it; but as I do not know of any direct authority which positively so decides. This remark is merely propounded for the consideration of the learned reader."

It is not necessary here to inquire whether the position taken by the learned author, is in conflict with the decisions made by himself in 1 Mason's R. 180, and 2 Story's R. 416, above referred to. In his same work on Bills of Exchange, he has stated the rule with great precision and accuracy in the following language, in Sect. 382: "In all cases where notice is required to be given, it is sufficient, if the notice is personal, that it is given on the day succeeding the day of the dishonor, early enough for the party to receive it on that day. If sent by the mail, it is sufficient if it is sent by the mail of the next day, or the next practicable mail." And in Sect. 288: "If the post or mail leaves the next day after the dishonor, the notice should be sent by that post or mail, if the time of its closing or departure is not at too early an hour to disable the holder from a reasonable performance of the duty. So that the rule may be fairly stated in more general terms to be, that the notice is in all cases to be sent by the next practicable post or mail after the day of the dishonor, having a due reference to all the circumstances of the case." The same learned author has laid down the rule very fully to the same effect, in his work on Promissory Notes. (See Story on Promissory Notes, Sect. 324.)

The statement of the rule by the learned Commentator, in the last extract, is consistent with the doctrine established by the Supreme Court of the United States, and fully sustained by authority.

The discrepancies which have arisen on this subject, appear to have grown out of an inaccurate use in some of the books and de-

cisions of the terms "his day," "an entire day," and a "whole day," &c. These phrases being at one time understood or taken literally, and at another time to mean a space of time equal to a full day. If these phrases are to be taken to mean the duration of a full day instead of the day itself, in their general application, the effect would be to change and break down numerous well settled and useful rules. The law, as a general thing, does not have regard to the fractions of a day, and thus compel parties to resort to nice questions of the sufficiency of a certain number of hours, or minutes, and to the taking of the parts of two different days to make up what may be considered in one sense a day, because equal in duration to one entire day. If this were the case, the endorser, after having been notified, would often be unable to determine whether he had been notified in season or not, until he had learned the hour of the day when the default occurred: and the holder would have it in his power at times, of affecting injuriously, the right of the endorser to an early notice, by delaying the presentment until a late hour in the day. Nothing more could have been intended by the use of these phrases than that each party should have a specified day upon which the act enjoined upon him, should be performed. This is the sense in which Lord Ellenborough used it in the case of *Smith* vs. *Mullett*, 2 Camp. 208, when he said, "if a party has an entire day, he must send off his letter conveying the notice, within post time of that day." And it is said by a learned elementary author, "if a party has an entire day, he must send off his letter conveying the notice of the dishonor of the Bill within post time of that day. Byles on Bills, 161.

The rule laid down in Smith's Compendium of Mercantile Law, to which the defendant in error has referred, will not, as I apprehend, be found on close examination, to be at variance with the doctrine adopted in this case. Smith's Mercantile Law, 310.

It is claimed on behalf of the plaintiff in error, that the notice of the dishonor of the Bill, should have been sent immediately to them, instead of being sent as it was in the first place, to the Bank of Salem. The holder is not bound to give notice of the dishonor to any more than his immediate endorser. And each party to a

bill has the same time after notice to himself, for giving notice to other parties beyond him, that was allowed to the holder after the default. *Sheldon* vs. *Benham*, 4 Hill, N. Y. 129, 133; *Eagle Bank* vs. *Hathaway*, 5 Metcalf, 213. And when a bill is sent to an agent for collection, the agent is required simply to give notice of the dishonor in due time to his principal; and the principal then, has the same time for giving notice to the endorsers after such notice from his agent, as if he had been himself an endorser receiving notice from a holder. *Bank of the United States* vs. *Davis*, 2 Hill's N. Y. R. 452. *Church* vs. *Barlow*, 9 Pick. 547. The party in this case, therefore, was not at fault by sending the notice directly to the Bank of Salem, leaving that bank to send the notice to the plaintiffs in error.

Applying the rule, therefore, which we have adopted as the correct one, to this case, it was incumbent on the plaintiffs below, in order to be entitled to a recovery, to show that the notice of the dishonor of the bill, was deposited in the Post Office at Pittsburgh, in time to be sent by the mail of the 28th day of July. Ten minutes past nine o'clock in the morning, was not an unseasonably early hour, or before a reasonable and convenient time after the commencement of early business hours of the day. The neglect, therefore, to send the notice by the mail of the next day after the day of the default, operated to discharge the plaintiffs in errror as endorsers, unless from some other cause, notice had been dispensed with, or rendered unnecessary. And for the charge of the Court of Common Pleas to the jury to the contrary, the judgment is reversed, and the cause remanded for further proceedings.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

Supreme Court of Pennsylvania, Harrisburg, 1853.

Assignment to Creditors.—Where, in an assignment, some creditors are preferred, it will not be implied, as against other creditors, that the preference extends to interest accruing after the date of the assignment. *Daniel Man's Appeal.* LOWRIE J.